

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PINTAR INVESTMENT COMPANY
RESIDENTIAL, L.P.,

Case No. 2:15-CV-2146 JCM (PAL)

ORDER

Plaintiff(s),

V.

MARTHA S. ESPIRITU.

Defendant(s).

Presently before the court is plaintiff Pintar Investment Company's motion to remand. (Doc. #10). Defendant Martha Espiritu filed a response, (doc. #12), and plaintiff filed a reply. (Doc. #13).

I. Background

In August 2015, plaintiff purchased real property commonly known as 10659 Mystic Seaport Ave., Las Vegas, Nevada 89129 (“the property”) at a trustee’s foreclosure sale. (Doc. #10). Plaintiff recorded a trustee’s deed upon sale of the property with the Clark County assessor’s office on August 14, 2015. (*Id.*). Defendant was the owner of the property from January 2003 until the sale and still resides on the property. (*Id.*).

On September 30, 2015, plaintiff filed an unlawful detainer action in the Eighth Judicial District Court in Clark County, Nevada, seeking to obtain present possessory interest in the property by evicting defendant from the property. (*Id.*) Defendant removed the action to this court based on diversity jurisdiction. (Doc. #1). The parties then filed the instant motions.

II. Legal Standard

For a district court to have diversity jurisdiction under 28 U.S.C. § 1332, the parties must

1 be completely diverse and the amount in controversy must exceed \$75,000. *See* 28 U.S.C. §
 2 1332(a); *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1098 (9th Cir. 2003).

3 Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district
 4 courts of the United States have original jurisdiction, may be removed by the defendant or the
 5 defendants, to the district court of the United States for the district and division embracing the
 6 place where such action is pending.” 28 U.S.C. § 1441(a).

7 Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.
 8 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal
 9 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*
 10 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
 11 (9th Cir. 1992).

12 On a motion to remand, the removing defendant faces a strong presumption against
 13 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;
 14 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

15 III. Discussion

16 Plaintiff’s motion to remand argues that this court lacks subject matter jurisdiction under the
 17 “home state” exception to diversity. Plaintiff also claims that the amount in controversy does not
 18 exceed \$75,000 because no monetary judgment is sought, only right to possession of the property.
 19 (Doc. #10). Alternatively, plaintiff further argues that there is no federal question jurisdiction in
 20 an unlawful detainer action as that is a matter of state law. (*Id.*)

21 Defendant contends that the present case should be consolidated with another pending case in
 22 this district and that, consequently, the court has subject matter jurisdiction over this case under
 23 Federal Rule of Civil Procedure 42(a)(3), which allows a court to consolidate an action in order to
 24 avoid unnecessary cost or delay. (Doc. #12).

25 Defendant’s petition for removal is based on diversity jurisdiction pursuant to 28 U.S.C. § 1332.
 26 Plaintiff argues that the “home state” exception requires remand of this case to state court. Title
 27 28 U.S.C. § 1441(b)(2) states: “A civil action otherwise removable solely on the basis of the
 28 jurisdiction under section 1332(a) of this title may not be removed if any of the parties in the

1 interest properly joined and served as defendants is a citizen of the State in which such action is
 2 brought. 28 U.S.C. § 1441(b)(2)". *See, e.g., Fed. Nat'l Mortgage Ass'n v. Oner*, No. 2:12-CV-
 3 01771-RCJ-VC, 2013 WL 1248322, at *2 (D. Nev. Mar. 25, 2013).

4 The court agrees with plaintiff. Defendant is a citizen of the state of Nevada. (Doc. #1).
 5 Defendant removed the complaint to this court relying on diversity of citizenship pursuant to rule
 6 1332. (*Id.*). Pursuant to 28 U.S.C. § 1441(b)(2), the complaint should not have been removed to
 7 this court.

8 Defendant does not address the "home state" rule or make any substantive arguments regarding
 9 whether the court has subject matter jurisdiction over this case. Instead, the defendant argues that
 10 the court should *sua sponte* order consolidation of this case and a previously filed case, *Espiritu v.*
 11 *Capital One*, case no. 2:15-cv-01933-JAD-PAL. (Doc. #12). Defendant suggests the court may do
 12 so under Fed. R. Civ. P. 42(a)(3), which states that a court may enter an order to consolidate if
 13 doing so would avoid any unnecessary cost or delay. (Doc. #12).

14 Judge Dorsey already considered this argument in her order denying defendant's request to
 15 consolidate. *Espiritu v. Capital One*, case no. 2:15-cv-01933-JAD-PAL (D. Nev. Dec. 9, 2015).
 16 Judge Dorsey declined to consolidate this case with her case because she "had serious reservations
 17 about whether this court has subject matter jurisdiction over the second filed action. The court also
 18 has serious reservations about whether the [p]laintiff's complaint states a claim on which relief
 19 may be granted given her admission that in the prior foreclosure she was in default on her loan
 20 obligations." *Id.* Rather than address the substance of the court's and plaintiff's subject matter
 21 jurisdiction arguments, defendant has instead chosen to repeat her previously unsuccessful
 22 consolidation argument.

23 Consequently, the court finds it lacks subject matter jurisdiction to hear this case and orders it
 24 be remanded to the state court for further proceedings. In light of this finding, the court finds it
 25 unnecessary to address the parties' other arguments.

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IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to remand (doc. #10), be, and the same hereby is, GRANTED.

DATED March 4, 2016.

James C. Mahan
UNITED STATES DISTRICT JUDGE